

“(1) review part 37 of title 48 of the Code of Federal Regulations as it relates to the use of advisory and assistance services; and

“(2) provide guidance and promulgate regulations regarding—

“(A) what actions Federal agencies are required to take to determine whether expertise is readily available within the Federal Government before contracting for advisory and technical services to conduct acquisitions; and

“(B) the manner in which personnel with expertise may be shared with agencies needing expertise for such acquisitions.”

§ 420. Repealed. Pub. L. 103-355, title II, § 2191, Oct. 13, 1994, 108 Stat. 3315

Section, Pub. L. 93-400, § 24, as added Pub. L. 99-234, title II, § 201, Jan. 2, 1986, 99 Stat. 1759; amended Pub. L. 100-679, § 12, Nov. 17, 1988, 102 Stat. 4070, related to limits on allowable travel expenses of Government contractors.

§ 421. Federal Acquisition Regulatory Council

(a) Establishment

There is established a Federal Acquisition Regulatory Council (hereinafter in this section referred to as the “Council”) to assist in the direction and coordination of Government-wide procurement policy and Government-wide procurement regulatory activities in the Federal Government.

(b) Membership

(1) The Council shall consist of the Administrator for Federal Procurement Policy and—

(A) the Secretary of Defense,

(B) the Administrator of National Aeronautics and Space; and

(C) the Administrator of General Services.

(2) Notwithstanding section 205(d) of the Federal Property and Administrative Services Act of 1949 [40 U.S.C. 486(d)], the officials specified in subparagraphs (A), (B), and (C) of paragraph (1) may designate to serve on and attend meetings of the Council in place of that official (A) the official assigned by statute with the responsibility for acquisition policy in each of their respective agencies or, in the case of the Secretary of Defense, an official at an organizational level not lower than an Assistant Secretary of Defense within the Office of the Under Secretary of Defense for Acquisition and Technology; or (B) if no official of such agency is assigned by statute with the responsibility for acquisition policy for that agency, the official designated pursuant to section 414(3) of this title. No other official or employee may be designated to serve on the Council.

(c) Functions

(1) Subject to the provisions of section 405 of this title, the General Services Administration, the Department of Defense, and the National Aeronautics and Space Administration, pursuant to their respective authorities under title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251, et seq.), chapters 4 and 137 of title 10, and the National Aeronautics and Space Act of 1958 (42 U.S.C. 2451, et seq.), shall jointly issue and maintain in accordance with subsection (f) of this section a single Government-wide procurement regulation, to be known as the “Federal Acquisition Regulation”.

(2) Any other regulations relating to procurement issued by an executive agency shall be limited to (A) regulations essential to implement Government-wide policies and procedures within the agency, and (B) additional policies and procedures required to satisfy the specific and unique needs of the agency.

(3) The Administrator, in consultation with the Council, shall ensure that procurement regulations promulgated by executive agencies are consistent with the Federal Acquisition Regulation and in accordance with any policies issued pursuant to section 405(a) of this title.

(4)(A) Under procedures established by the Administrator, a person may request the Administrator to review any regulation relating to procurement on the basis that such regulation is inconsistent with the Federal Acquisition Regulation.

(B) Unless the request is frivolous or does not, on its face, state a valid basis for such review, the Administrator shall complete such a review not later than 60 days after receiving the request. The time for completion of the review may be extended if the Administrator determines that an additional period of review is required. The Administrator shall advise the requester of the reasons for the extension and the date by which the review will be completed.

(5) If the Administrator determines that a regulation relating to procurement is inconsistent with the Federal Acquisition Regulation or that the regulation should otherwise be revised to remove an inconsistency with any policies issued under section 405(a) of this title, the Administrator shall rescind or deny the promulgation of the regulation or take such other action authorized under section 405 of this title as may be necessary to remove the inconsistency. If the Administrator determines that such a regulation, although not inconsistent with the Federal Acquisition Regulation or such policies, should be revised to improve compliance with such Regulation or policies, the Administrator shall take such action authorized under section 405 of this title as may be necessary and appropriate.

(6) The decisions of the Administrator shall be in writing and made publicly available. The Administrator shall provide a listing of such decisions in the annual report to Congress required by section 407¹ of this title.

(d) Additional responsibilities of membership

Subject to the authority, direction, and control of the head of the agency concerned, each official who represents an agency on the Council pursuant to subsection (b) of this section shall—

(1) approve or disapprove all regulations that are, after 60 days after November 17, 1988, proposed for public comment, promulgated in final form, or otherwise made effective by such agency relating to procurement before such regulation may be promulgated in final form, or otherwise made effective, except that such official may grant an interim approval, without review, for not more than 60 days for a procurement regulation in urgent and compelling circumstances;

(2) carry out the responsibilities of such agency set forth in chapter 35 of title 44 for

¹ See References in Text note below.

each information collection request (as that term is defined in section 3502(11)¹ of title 44) that relates to procurement rules or regulations; and

(3) eliminate or reduce (A) any redundant or unnecessary levels of review and approval, in the procurement system of such agency, and (B) redundant or unnecessary procurement regulations which are unique to that agency.

The authority to review and approve or disapprove regulations under paragraph (1) of this subsection may not be delegated to any person outside the office of the official who represents the agency on the Council pursuant to subsection (b) of this section.

(e) Governing policies

All actions of the Council and of members of the Council shall be in accordance with and furtherance of the policies prescribed under section 405(a) of this title.

(f) General authority with respect to FAR

Subject to section 405(b) of this title, the Council shall manage, coordinate, control, and monitor the maintenance of, and issuance of and changes in, the Federal Acquisition Regulation.

(Pub. L. 93-400, § 25, as added Pub. L. 100-679, § 4, Nov. 17, 1988, 102 Stat. 4056; amended Pub. L. 101-510, div. A, title VIII, § 807, Nov. 5, 1990, 104 Stat. 1593; Pub. L. 104-106, div. D, title XLIII, § 4322(a)(2), Feb. 10, 1996, 110 Stat. 677; Pub. L. 104-201, div. A, title VIII, § 822, title X, § 1074(f)(3), Sept. 23, 1996, 110 Stat. 2609, 2661; Pub. L. 105-85, div. A, title VIII, § 841(d), Nov. 18, 1997, 111 Stat. 1843.)

REFERENCES IN TEXT

The Federal Property and Administrative Services Act of 1949, referred to in subsec. (c)(1), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Title III of the Act is classified generally to subchapter IV (§ 251 et seq.) of chapter 4 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 471 of Title 40, Public Buildings, Property, and Works, and Tables.

The National Aeronautics and Space Act of 1958, referred to in subsec. (c)(1), is Pub. L. 85-568, July 29, 1958, 72 Stat. 426, as amended, which is classified generally to chapter 26 (§ 2451 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2451 of Title 42 and Tables.

Section 407 of this title, referred to in subsec. (c)(6), was repealed by Pub. L. 104-106, div. D, title XLIII, § 4305(b), Feb. 10, 1996, 110 Stat. 665.

Section 3502 of title 44, referred to in subsec. (d)(2), which in par. (1) defined “information collection request”, was omitted in the general amendment of chapter 35 of Title 44, Public Printing and Documents, by Pub. L. 104-13, § 2, May 22, 1995, 109 Stat. 163. Pub. L. 104-13 enacted a new section 3502 of Title 44 which does not define “information collection request”.

AMENDMENTS

1997—Subsec. (g). Pub. L. 105-85 struck out subsec. (g) which required the Administrator for Federal Procurement to publish an annual report relating to the development of procurement regulations.

1996—Subsec. (b)(2). Pub. L. 104-106 substituted “Under Secretary of Defense for Acquisition and Technology” for “Under Secretary of Defense for Acquisition”.

Subsec. (c)(3). Pub. L. 104-201, § 1074(f)(3)(A)(i), struck out “the policies set forth in section 401 of this title or” after “in accordance with”.

Subsec. (c)(5). Pub. L. 104-201, § 1074(f)(3)(A)(ii), struck out “or the policies set forth in section 401 of this title” after “section 405(a) of this title”.

Subsec. (e). Pub. L. 104-201, § 1074(f)(3)(B), struck out “the policies of section 401 of this title and” after “and furtherance of”.

Subsec. (g)(1). Pub. L. 104-201, § 822(1), substituted “every 12 months” for “within 6 months after November 17, 1988, and every 6 months thereafter” and inserted “and” after the semicolon at end.

Subsec. (g)(2)(H). Pub. L. 104-201, § 822(2), substituted a period for “; and” at end.

Subsec. (g)(3). Pub. L. 104-201, § 822(3), struck out par. (3) which read as follows: “report to Congress within 180 days after November 17, 1988, in consultation with the Administrator of the Office of Information and Regulatory Affairs, regarding—

“(A) the extent of the paperwork burden created by the Federal procurement process, and

“(B) the extent to which the Federal procurement system can be streamlined to reduce unnecessary paperwork while at the same time maintaining record-keeping and reporting requirements necessary to ensure the integrity and accountability of the system.”

1990—Subsec. (b)(2). Pub. L. 101-510 inserted before semicolon at end of cl. (A) “or, in the case of the Secretary of Defense, an official at an organizational level not lower than an Assistant Secretary of Defense within the Office of the Under Secretary of Defense for Acquisition”.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by Pub. L. 104-106, see section 4401 of Pub. L. 104-106, set out as a note under section 251 of this title.

STATUS OF DIRECTOR OF DEFENSE PROCUREMENT

Pub. L. 102-190, div. A, title VIII, § 809, Dec. 5, 1991, 105 Stat. 1423, as amended by Pub. L. 103-160, div. A, title IX, § 904(f), Nov. 30, 1993, 107 Stat. 1729, provided that: “For the purposes of the amendment made by section 807 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510; 104 Stat. 1593) to section 25(b)(2) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(b)(2)), the Director of Defense Procurement of the Department of Defense shall be considered to be an official at an organizational level of an Assistant Secretary of Defense within the Office of the Under Secretary of Defense for Acquisition and Technology.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 256, 259 of this title; title 10 section 2302; title 15 section 638; title 42 section 8287; title 50 App. section 2154.

§ 422. Cost Accounting Standards Board

(a) Establishment; membership; terms

(1) There is established within the Office of Federal Procurement Policy an independent board to be known as the “Cost Accounting Standards Board” (hereinafter referred to as the “Board”). The Board shall consist of 5 members, including the Administrator, who shall serve as Chairman, and 4 members, all of whom shall have experience in Government contract cost accounting, and who shall be appointed as follows:

(A) two representatives of the Federal Government—

(i) one of whom shall be a representative of the Department of Defense and be appointed by the Secretary of Defense; and

(ii) one of whom shall be an officer or employee of the General Services Administration appointed by the Administrator of General Services; and